IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5823 of 1996

For Approval and Signature:
HONOURABLE MR.JUSTICE K.M.THAKER

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SANTRAM GRAIN SUPPLIERS - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HARIN P RAVAL for Petitioner(s) : 1,
MS TRUSHA PATEL, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE K.M.THAKER

Date : 05/12/2007

ORAL JUDGMENT

1. The petitioner has preferred this petition under Articles 226 and 227 of the Constitution challenging the orders dated 30.7.1994 and

4.4.1996.

2. The factual background in light of which present petition is preferred is as follows :-

2.1 The petitioner firm is a grain merchant and commission agent and was granted License No.679 in the year 1988. The Gujarat Essential Articles (Licensing Control and Stock Declaration) Order 1981 was at relevant time, applicable to it.

2.2 It is the case of the petitioner that on 21.7.1994 it had dispatched 201 bags of ground-nut weighing 7035 kgs. in favour of M/s. B.A.Matalia & Company, Jamnagar.

2.3 It is further stated that the truck bearing registration No. GRY-4078 carrying on the said goods was intercepted by the respondent authorities on 21.7.1994 when, upon inspection, the respondent authorities noticed that the aforesaid quantity of ground-nut was being transported merely on memo on the letterhead of

the petitioner firm, however, there was no invoice and/or gate pass, in respect of the said goods.

2.4 According to the respondent authorities the said irregularities constitute breach of clause No. 18(4) of the Gujarat Essential Articles (Licensing Control and Stock Declaration) Order 1981 (hereinafter referred to as “the 1981 order”) and condition No. 9 of petitioner's license.

2.5 A show cause notice dated 21.7.1994 was issued in respect of the breach alleged to have been committed by it. The show cause notice dated 21.7.1994 recites the said factual matrix. The petitioner was asked to submit its explanation by virtue of the said show cause notice.

2.6 Despite the claim that it had submitted its explanation – reply to the said notice, the same is not available on record of the present

petition. The petitioner was afforded an opportunity of hearing by the concerned authority in respect of the said show cause notice. The said aspect is not disputed by the petitioner. After hearing, the order dated 30.7.1994 came to be passed by the Assistant Collector, Rajkot.

2.7 On 21.7.1994 a seizure order was also passed by the District Supply Officer and the goods in question were seized.

2.8 After hearing the parties the order dated 30.7.1994 came to be passed whereby the authority concluded that the petitioner was guilty of having committed breach of clause – 18(4) of the 1981 Order as well as condition No.9 of its license.

2.9 In light of the said findings and conclusion, the goods in question came to be confiscated in exercise of powers under section 6(A) of the Essential Commodities Act. At the

relevant time, market value of the goods in question was assessed at the rate of Rs.1,00,248.75 ps.

2.10 The petitioner, being aggrieved by the said, order carried the same before the respondent No.1 by way of an appeal which was registered as Appeal No.485 of 1994. At the time when the said appeal was registered by respondent No.1, an order was passed by respondent No.1 staying the operation of the seizure order as well as order dated 30.7.1994 on the condition that the petitioner must submit bank guarantee to the extent of 50% of the market value assessed by the Officer at the time of seizure and for the balance 50% solvency may be submitted. The petitioner has stated that the said direction was complied with.

2.11 The aforesaid order 30.7.1994 passed by the Assistant Collector, Rajkot was taken in appeal which came to be registered as Appeal No.485 of 1994. The Deputy Secretary i.e. respondent No.1

passed order dated 4.4.1996 after hearing the petitioner herein and after considering the contentions raised by present petitioner in the said appeal.

3. It is against the said order dated 4.4.1996 and the earlier order (i.e. the order in original dated 30.7.1994) that the petitioner has preferred present petition.

4. Heard Mr. Jinesh H. Kapadia, advocate for Mr. H.P.Rawal, advocate for petitioner and Ms. Trusha Patel, learned AGP for respondents.

5. Since as per the condition of the stay order the petitioner was required to submit bank guarantee for 50% of the assessed value of the goods i.e. for an amount of about Rs.50,124/-. A query was put to the petitioner about the status of the bank guarantee i.e. as to whether the bank guarantee has been kept alive by renewing the same from time to time, or not. Unfortunately, neither the petitioner nor the respondents are

able to throw light on this point.

5.1 In the event the bank guarantee is not renewed from time to time and is not kept alive, then, it would reflect upon the conduct and intention of the petitioner.

5.2 No proof of any nature has been produced by the petitioner to establish that the condition imposed for releasing the goods pursuant to order of seizure, has been complied with. Neither the petitioner nor the respondents are in a position to show even initial bank guarantee which as per the petitioner's claim, was required to be submitted.

5.3 In such circumstances, it is difficult to assume that the petitioner has regularly renewed the bank guarantee, more particularly, because the petitioner's advocate did not give any satisfactory reply, much less evidence regarding renewal of bank guarantee from time to time.

6. The petitioner has, with regard to the issue involved in the matter, raised a defence that the said goods had been dispatched for the purpose of approval and not for sale, and for that purpose a memo on the letterhead of the petitioner firm was prepared and that the said memo accompanying the goods in question. The petitioner has, however, not produced the said memo on record of this petition though heavy reliance is placed on the said memo. It is also submitted that no sale had taken place and, therefore, invoice was not issued. It is further contended that in the district where the petitioner has its establishment, there is no practice of issuing gate pass and, therefore, when the vehicle was intercepted, the gate pass could not be produced. In support of the said submission the petitioner has produced certificate of Mamlatdar which is dated 27.7.1994.

7. The petitioner has, in support of his contentions, relied on the judgment between ***N.***

Nagendra Rao & Company V/s. State of Andhra Pradesh reported in **AIR 1994 SC 2663**, ***M/s. Navjivan Roller Floor Mill V/s. State of Gujarat and Another*** reported in **2001 (3) GLH 341** and ***Damodar Oil Mill v/s District Supply Officer, Junagadh*** reported in **2001 (1) GLH 580.**

8. In response, Ms. Patel, learned AGP appearing for the respondents submitted that the provisions of 1981 Order are provisions of law, they are mandatory and on ground of alleged absence of tradition, such requirement cannot be by passed.

8.1 She further contended that the goods were dispatched and were transported in violation of the provisions under 1981 Order and the action of the petitioner also amounted to breach of condition No.9 of the license. Since the petitioner, by its action, committed breach of the provisions under 1981 Order as well as of its license, the goods in question were confiscated and as the goods were perishable in

nature, the same were released. In her submission, the respondents' action is justified and does not call for interference.

8.2 Ms. Patel, learned AGP also submitted that there is no jurisdictional error committed by the respondent authorities in passing the order and in fact, the orders have not been challenged on ground of jurisdictional error. In support of her said submission, she has relied on in case of ***Mohd. Yunus V/s. Mohd. Mustaqim and others*** reported in **1984 SC 38** and the judgment of this Court in case between **Chhagan Ranchhod Kukvava V/s. General Manager, Western Railway, Bombay & Another** reported in **1998 (1) GLH 461.**

9. So far as the factual backdrop is concerned, the facts are not in dispute. However, the submission of the petitioner to the effect that there is no practice of issuing invoice and/or there is no practice of issuance of gate pass by the Mamlatdar, is disputed by the respondent. The action impugned in present petition has been

taken on the strength of provisions contained under 1981 Order, and more particularly, clause – 18 thereof. The said provision reads,

> ***"18. General conditions for dealers.- A license holder under this order shall, apart from any special conditions that may be imposed by the licensing authority, observe the following general conditions:-***
>
> ***(1) XXX***
> ***(2) XXX***
> ***(3) XXX***
> ***(4) (i) Every producer, or as the case may be, wholesaler shall issue to every transport operator transporting the stock of any essential article from his installation or depot or the place of storage, a correct invoice or a gatepass, as the case may be, showing the producer's or wholesaler's name, address, the the name and address of the consignee, the date and time of delivery and quantity delivered and shall keep a duplicate of the same to be made available for inspection on demand by any officer specified in Clause 26, or as the case may be, by any officer authorised in this behalf.***

> ***(ii) Every transport operator to whom an invoice or a gatepass, as the case may be, issued by a producer or a wholesaler under paragraph (1) shall, where the stock of the essential article is in transit, retain with him such invoice or gatepass and make it available for inspection on demand by any officer specified in Clause 26 or the authorised officer and shall deliver the same to the consignee dealer at the time of the delivery of such stocks.”***

9.1 In the impugned orders, the respondents authorities have also concluded that there is breach of condition No.9 of the license. The petitioner has preferred not to produce the copy of the license on record. The said condition in the prescribed form of licence, reads thus :-

> ***“9. The licence holder shall, except when specially exempted by the State Government or by the licensing authority in this behalf, issue to every customer a correct-receipt of invoice, as the case may be, giving***

> ***his own name, address and licence number, (if any) of the purchaser, the date of transaction, the quantity of essential articles sold, the price at which it is sold and the total amount charged and shall keep a duplicate of the same to be available for inspection on demand by the licensing authority or any officer authorized by it in this behalf;***
>
> ***Provided that it shall not be necessary to issue such receipt or invoice in respect of retail sale costing not more than fifteen rupees unless demanded by a customer but true and correct account of such sale showing therein the date of sale, quantity of essential articles so sold and price charged shall be maintained."***

10. It is not in dispute that ground-nut is one of the commodities covered under Schedule – I to the said 1981 Order.

10.1 Under the said 1981 Order clause – 2(8) defines the term essential articles. The said provision reads, thus, :-

"2. Definitions – In this Order, unless the context otherwise requires,-

(1) XXX
(2) XXX
(3) XXX
(4) XXX
(5) XXX
(6) XXX
(7) XXX
(8) "essential articles" means an article specified in the Schedule I;"

Thus, as per the said 1981 Order ground-nut, at the relevant time, was an essential article.

11. It is pertinent to note that the quantity in question is 7035 kgs. It is not palatable that the grain merchant and commission agent would dispatch and deliver such a huge quantity for mere approval. Therefore, the authorities below cannot be faulted in not accepting such explanation of the petitioner that the goods were dispatched only for approval and, therefore, there was no invoice.

11.1 Further, the language of clause – 18(4) does not make the requirement of issuance of correct invoice or gatepass, conditional to event of sale.

11.2 It is, at this stage, pertinent to note that the respondent No.2 has in his order also taken note of the fact that such a huge quantity was being transported only on the basis of a note written on the letterhead of the petitioner, however, interestingly the same was not signed by any authorized representative of the petitioner.

11.3 It is also equally relevant to note that the petitioner, though raised a contention in the petition and during the hearing that the goods in question were forwarded for approval, no such contention was urged before the first authority, whose order is impugned in the present petition. The said contention is, therefore, raised only subsequently in the petition.

11.4 An order cannot be faulted or struck out on the ground which was not urged before the authority passing the order. Even otherwise, as noted earlier, the said explanation of the petitioner that since the goods were being transported only for approval, the invoice was not issued and, therefore, the same was not available at the time of confiscation is not palatable considering the quantity of the said goods.

11.5 Even if that be so then also as contended by Ms. Patel, learned AGP on behalf of the respondents the so called practice will not justify breach of provisions of law and nobody can be excused from violation of provisions of law on the ground of alleged absence of tradition.

11.6 The respondent is also right in contending that mere assertion cannot be construed as an evidence and the petitioner has, so far as

invoice part is concerned, failed to substantiate and establish the claim that the dispatch was only for approval and not for sale. It is pertinent to note that under clause – 18 (4) the requirement of invoice and gatepass is not cumulative but is alternative and the petitioner has ignored both. It is submitted by Ms. Patel, learned AGP that the word “shall” has been consciously used in the said clause, which makes the requirement of issuance of invoice or a gatepass unavoidable and mandatory requirement.

11.7 The purpose behind incorporating such a requirement in the order is obvious. Section 3 of the Essential Commodities Act provides, inter alia, that for the purpose of maintaining supply of essential commodities and for securing equitable distribution and availability at fair prise, if the Government feels necessary, then, it may by issuing notification regulate the essential commodities.

11.8 The issuance of 1981 Order makes it clear that the Government felt it necessary to regulate the essential commodities mentioned in Schedule – I of the said order.

11.9 In that view of the matter, diligent compliance with the requirement of the said order by the licensee is obvious and assumes more significance, and breach of any of the requirements would justify the conclusion that the concerned person committed breach knowingly.

12. Under clause – 27 of the said 1981 Order there is a provision for exemption whereby power is conferred on the State Government that by a general or special order it may exempt any person or class of persons from operation of all or any of the provisions of the order.

12.1 If the petitioner had any genuine and practicable difficulty either on account of the alleged practice or for any special reason then it could have taken necessary steps for seeking

exemption from the rigour of clause – 18(4) and/or condition No.9 of its license, however, the petitioner preferred not to do so and opted to commit breach of the said provision.

12.2 This aspect of the matter is important also for the reason that the document produced by the petitioner i.e. the certificate dated 27.7.1994 gives out that the petitioner had not even asked the authorities for gatepass.

12.3 An attempt to put stress on the Mamlatdar's certificate regarding absence of practice is made, however, while stressing the said particulars mentioned in Mamlatdar's certificate, the petitioner is conveniently underplaying and ignoring other fact mentioned in the said certificate viz. the petitioner had not even cared to ask for the gatepass.

12.4 The said convenient inaction of the petitioner coupled with the fact that the petitioner ignored the provision under clause –

27 also exhibits petitioner's attitude or belief that the provision of law can be violated with impunity.

13. When the 1981 Order provided two options to the petitioner viz. either to issue an invoice or to issue a gatepass, it was obligatory for the petitioner to fulfill the requirement.

13.1 In the facts noted above and in light of the provisions the petitioner cannot be heard to contend that the said requirements were not complied with because of the alleged absence of practice and considering the quantity involved, the explanation that the dispatch was not for sale but merely for approval is also not palatable more particularly due to conspicuous absence of any cogent corroborative and supporting evidence, documents or even oral (e.g. Of the so-called dealer to whom allegedly the said goods were forwarded) and that therefore the authority cannot be said to have acted arbitrarily, or without application of

mind or irrationally.

14. Reliance has been placed on the judgment of the Hon'ble Supreme Court in case of ***N. Nagendra Rao & Company*** (supra). In the said case the question for consideration by the Hon'ble Supreme Court was mainly regarding State's obligation to pay compensation and as to whether seizure of the goods in exercise of statutory powers immunizes the State completely from any loss or damages suffered by the owner.

14.1 In present case, the said goods, after seizure, were immediately released by the concerned authority on condition requiring the petitioner to give bank guarantee for the 50% of the value of the goods in question and solvency for balance 50% and in that view of the matter, the petitioner has not come forward with any claim for damages. Reliance, however, has been placed on what their Lordships held with regard to exercise of powers of confiscation of the goods in question. The petitioner's advocate, in

particular, relied upon what their Lordships held in para – 6(A) of the said judgment. The relevant part of said para – 6(A) reads thus:-

> ***"But what needs to be mentioned is that since the power is very wide as a person violating the Control Orders is to be visited with serious consequences leading not only to the confiscation of the seized goods, packages or vessel or vehicle in which such essential commodity is found of is conveyed or carried, but is liable to be prosecuted and penalized under S. 7 of the Act, it is inherent in it that those who are entrusted with responsibility to implement it should act with reasonableness, fairness and to promote the purpose and objective of the Act. Further, it should not be lost sight of that the goods seized are liable to be confiscated only if the Collector is satisfied about violation of the Control Orders. The language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word 'may'. A trader indulging in black-marketing or selling adulterated goods***

etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list etc. or even discrepancies in stock."

15. As noted hereinabove earlier the petitioner had option of issuing invoice or gatepass. The petitioner did not issue either invoice or gatepass and consciously dispatched the said goods, though covered by 1981 Order and also in breach of condition No.9 of its license, along with remark or under a note, on its letterhead, which was not even signed by any authorized representative of petitioner and then the person to whom the said goods were dispatched was not brought before the authority.

15.1 While dispatching the goods, the petitioner did not even make request for gatepass to the authority and when the goods came to be confiscated, the petitioner gave only one explanation that there was no practice of issuing gate pass. Further a large quantity of ground-nut was dispatched by the petitioner.

15.2 The explanation regarding non-issuance of invoice came to be raised subsequently in the appeal memo.

16. The findings and decisions are concurrent, and in the facts of the case and in light of the material on record, it cannot be said that the authorities have acted arbitrarily.

17. Since the goods in question were released immediately, the petitioner must have thereafter immediately sold the goods in market and, that therefore, it cannot be said to have suffered any loss so far as the said goods are concerned.

17.1 Upon sale of the goods, the petitioner must have derived its profit as well. Thus, in view of aforesaid discussion, the question which may survive for consideration is only to the limited extent viz. as to whether confiscation of 100% quantity is justified or not.

18.While countering the submissions made on the basis of the judgment of the Hon'ble Supreme Court in the case of ***N. Nagendra Rao & Company***, Ms. Patel, learned AGP contends that in present case the 1981 Order was issued by the Government for maintaining supply of certain essential commodities and for securing their equitable distribution and availability at fair price. So it was with a view to properly and diligently implementing the 1981 Order that the authorities passed the orders impugned in present petition. In her submission, the impugned orders are, therefore, justified and cannot be said to be unwarranted or excessive or harsh.

18.1 It is true that considering the object of such orders if such actions of commission agent or dealer which constitute breach of the provisions are countenanced by the authorities or if the authorities deal with such infractions lightly then the purpose of the Order would be frustrated.

19. On behalf of the petitioner, so as to contend that 100% confiscation was not justified, reliance is placed on the decision of this Court in case of ***Damodar Oil Mill*** (supra). In the said judgment, the Court took into account the fact that the raid was carried out around 8.30 p.m. when the machines of the mill were in operation and light was being obstructed and that, therefore, it could not have been concluded that the business for the day was closed at the time when the raid was carried out. The Court, in the background of such facts and treating the breach as a technical breach or formal contravention, set aside the confiscation order. The petitioner by relying on the said judgment submits that the present breach also is technical breach. Countering the said submission, Ms. Patel, learned AGP submitted that in the said case there was probability of curing the defect before closing of the business on the particular day when the raid was carried out and it was the said aspect which was taken into account by the Court while setting aside the confiscation

orders in the said case. It is noted hereinabove earlier that in present case the goods in question was already dispatched by the petitioner and it had almost reached the destination i.e. had almost crossed 3/4th of its distance when the truck was intercepted that, therefore, the breach had already occurred and there was no probability of curing the said defect inasmuch as the petitioner had dispatched the goods without issuing either invoice or gatepass. Under the circumstances, the said judgment is not of much assistance to the petitioner in view of facts of this case.

20. So far as the judgment in case of **(M/s.) Navjivan Roller Floor V/s. State of Gujarat and Anr** *(supra)* is concerned, it is required to be noted that in the said case in all seven deferent irregularities were alleged and the petitioner had, in his reply, tendered explanation in respect of the alleged irregularities and after considering the explanation, the Collector had passed order

holding that irregularities alleged were proved and, therefore, out of the seized quantity worth Rs.12,18,372/-, quantity worth Rs.1,21,837/- was confiscated. The petitioner, aggrieved by the said order, carried the matter in appeal and the appellate authority passed an order reducing the amount of confiscation to 50% of Rs.1,21,837/-. It was the said order which was challenged by the petitioner in the aforesaid case wherein after holding that the findings in conclusions of the authorities were justified, this Court modified the order by reducing the amount of confiscation from 50% to Rs.1,21,837/- to 25% of Rs.1,21,837/-. In para – 11 of the said judgment, it has been held as follows :-

> ***"11. Coming to the last contention of Mr Amin that the order of confiscation even to the extent of 50% of Rs.1,21,837/- is harsh, the learned AGP submits that the order cannot be said to be harsh when the petitioner had not entered in the stock register the quantity of wheat***

which was sold at Ahmedabad.

This defence, of course, merits consideration, but at the same time Mr Amin submits that the phraseology of clause 9 was capable of being interpreted as reading "only stock being received at the dealer's premises and delivered from the dealer's premises" is required to be recorded in the stock register as the stock register is being maintained at the godown and, therefore, the petitioner was of the bona fide belief that only stock being received and delivered from the godown was required to be reflected in the stock register. In any case, the petitioner's averment that the stock in question was reflected in the purchase register and considering the fact that there was no price control as far as wheat is concerned and considering the following dictum of Their Lordships of the Apex Court in N. Nagendra Rao & Co. vs. State of A.P, AIR 1994 SC 2663 and that there is no allegation of

> ***adulteration or blackmarketing, the Court is of the view that the ends of justice would be served if the material to be confiscated is reduced from 50% to 25% of Rs.1,21,837/-.***
>
> ***"Further, the goods seized are liable to the confiscated only if the Collector is satisfied about violation of the Control Order. The language of the section and its setting indicate that every contravention cannot entail confiscation. That is why the section uses the word `may'. A trader indulging in black marketing or selling adulterated goods etc. should not, in absence of any violation, be treated at par with technical violations such as failure to put up the price list etc. or even discrepancies in stock."***

21.Ms. Patel, learned AGP, countering the submissions based on the said judgment contended that the issue involved in the said matter was regarding irregularity in maintaining stock, and

thus, in facts of this case, the said judgment would not be applicable. As mentioned hereinabove earlier, there were about seven irregularities which were alleged against the petitioner and one of them was regarding maintaining stock register. It is, however, also relevant to note that in the said case the alleged irregularities were duly explained by the petitioner through his reply.

22. In present case, there are, as noticed hereinabove earlier, concurrent findings of fact and both the authorities have after examining petitioner's explanation arrived at a conclusion that there was breach of 1981 Order.

22.1 The submission to the effect that there was no sale has not been urged in the first instance before the authority who passed the order in original and the said contention came to be taken up for the first time in the appeal and there also the said contention is not established with help of any cogent material.

22.2 Further, it is not palatable that a grain merchant and commission agent would dispatch such huge quantity of about 7035 kgs groundnut i.e. goods which are declared essential commodity to a dealer only for approval purpose. Thus, the finding recorded by both the authorities that there has been violation of clause – 18(4) of 1981 Order and condition No. 9 of the license cannot be said to be incorrect or arbitrary or without application of mind.

22.3 It is, however, pertinent to note that in present case no allegation about black marketing has been made and the show cause notice is also silent as regards the allegation about black marketing or intention to indulge into black marketing. Ms. Patel, learned AGP, therefore, is not justified in urging that such an allegation is required to be read into the notice. Any conclusion with regard to allegation to which the petitioner is not put to notice, could not have been recorded. Allegation regarding black

marketing is a serious allegation and a person against whom it is sought to be made is required to be put to strict notice and he should be called upon in express terms to offer his explanation regarding such allegation.

22.4 In present case, when the show cause notice is silent about the said allegation and the orders are also silent in connection with allegation about black marketing, the respondents cannot be heard to urge that the said aspect ought to be read into the notice and the orders because that would be the only logical corollary with reference to petitioner's action.

22.5 Thus, the action of the petitioner of having committed breach of clause – 18(4) and condition No.9 of license is required to be viewed and examined in absence of allegation of black marketing.

23. In such view of the matter, now the impugned

orders are required to be examined to find out as to whether the authorities have properly applied mind to the facts of the case and conduct of the petitioner while determining the quantum or the extent of confiscation.

23.1 Both the authorities have directed confiscation of 100% quantity which was seized, in terms of value, the worth of quantity and then ordered to be confiscated goods to Rs.1,00,248.75. Examination of the orders reveal that when the authorities have duly considered all relevant aspects while reaching to the conclusion that the petitioner has violated the provisions and 1981 Order and condition No.9 of the license, the aspect of extent of confiscation has not been addressed and the reasons for confiscating 100% of the quantity are not expressly recorded. Further, it is borne out from the record that while the petitioner did not produce any invoice, it, however, did produce, for inspection by authorities, the registers which, as per petitioner's, claim, did

contain entry reflecting the said dispatch. The said aspect is not coming out from the orders and that therefore it appears that the said aspect has been lost sight of while passing the impugned order and determining the extent of confiscation. An order directing 100% confiscation does not reflect application of mind to the issue of extent of confiscation vis-a-vis the breach and absence of allegation of black marketing or adulteration which are relevant considerations as held by their Lordships in case of ***N. Nagendra Rao and Company*** (supra) and by this Court in case of ***(M/s.) Navjivan Roller Floor Mill*** (Supra). In such circumstances, normally it would be appropriate to remand the matter to the authority for considering the aforesaid aspects and for taking decision. However, almost 11 years have gone by since the orders in question came to be passed. Therefore, it would not be in fitness of things to relegate the petitioner again to the original authority for decision. Such an action will not only delay and prolong the final outcome but is

also likely to result into another round of litigation inasmuch as if the petitioner is aggrieved by the order of the original authority, he is likely to initiate further proceedings. Ms. Patel submits that in such event the petitioner should be directed to pay the amount with interest. In the facts of present case, I do not think it proper or just to grant the said request. In light of the discussion aforesaid, I am of the view that interest of justice would be served, if following directions are passed.

(I) If the petitioner pays the amount, as per the direction in present petition, within period of 4 weeks from the date of the receipt of this order then extent / quantum of confiscation shall stand reduced to 75% as against 100% directed by the authorities. However, this deduction shall be available only if the amount is paid by the petitioner within 4 weeks and if the petitioner has renewed the bank guarantee / solvency from time to time.

(II) In the event, the petitioner fails

to pay the amount either within 4 weeks (as per condition No.I), then in that event, the entire amount shall become payable and the petitioner will not be entitled for benefit of the reduction granted by this order.

(III) In the event, the petitioner has not submitted the bank guarantee or solvency and/or has not kept the same alive by renewing regularly from time to time and has allowed the same to expire, then in that event also, the benefit of reduction granted by this order will not be available and the petitioner shall be liable to pay the entire amount as per the orders of respondent authorities.

24. The petition, accordingly, partly allowed. Rule is made absolute to the aforesaid extent and with aforesaid directions. Interim relief stands vacated. No order as to costs.

[K.M.Thaker, J.]

kdc